

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and

THE HON'BLE MR JUSTICE Ch.S.R.K. PRASAD

WRIT PETITION NO : 21340 of 2004

Between:

S.Ramasubbamma, W/o.Late Tirupathaiah,
R/o.Garashanapalli, Bathalapalli Mandal, Ananthapur District.

..... PETITIONER

AND

- 1 The Government of Andhra Pradesh rep.by its Secretary, General Administration (L & O.II), Department at Secretariat Hyderabad.
- 2 The Collector & District Magistrate, Ananthapur District at Ananthapur.
- 3 The Superintendent of police, Ananthapur District, Ananthapur.
- 4 The Superintendent, Central Prison, Cherlapalle, Ranga Reddy District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Habeus Corpus, or any other appropriate writ or writs, order or direction, and call for the records relating to and connected with proceedings C.No.5001-23/MC/2004 dt. 18-9-2004 on the file of the 2nd Respondent, and set aside the same as illegal, arbitrary and contrary to the provisions of Act 1/1986 and order release of the detenu Bestha Sudha Nagarjuna and consequently direct the Respondents to pay Rs.50,000/- as compensation by way of damages for detaining the detenu illegally.

Counsel for the Petitioner: MR.N.RANGA REDDY

Counsel for the Respondent No.: THE ADVOCATE GENERAL

The Court at the admission stage made the following :

Oral Order: (Per Sri BN.J)

This writ petition has been filed by the mother of the detenu viz., Bestha Sudha Nagarjuna who has been detained by the order of the District Magistrate, Ananthapur under the provisions of the A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (hereinafter called the 'the Act').

Two grounds have been mentioned in the grounds of detention. They relate to Crime Nos.10 and 24 of 2004. Both the crimes are registered under various provisions of the Indian Penal Code and the provisions of Explosive Substances Act.

This Court has earlier held that the detention orders cannot be passed unless a person is a 'goonda' within the meaning of Section 2(g) of the Act. 'Goonda' means a person, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code.

Since the offences allegedly committed by the detenu are the offences under the Explosive Substances Act, the detention is illegal. It is also contended by the learned counsel for the petitioner that the material on which the District Magistrate relied has not been supplied to the detenu which is now conceded in para 5 of the counter which reads as under;

“ In reply to para 3 it is submitted that at the time of arrest of detenu, the order of detention and grounds of detention have been duly served on him. It is submitted that the detenu was arrested in connection Cr.Nos.10/2004 and 24/2004 and he was enlarged on bail, thereby the detenu was aware of these offences and as such it cannot be said that non-supply of the said material vitiate the order of detention and there is no violation of Article

22(5) of the Constitution of India.”

It is not sufficient in our view to say that the material was already known to the detenu and therefore it was not supplied. For these reasons, the order of detention cannot be sustained. It is accordingly quashed.

The writ petition is allowed. The detenu be released forthwith, if not required in any other case.

08..12..2004

msv.

To

- 1 The Secretary, General Administration (L & O.II) Department, Government of Andhra Pradesh, Secretariat, Hyderabad.
- 2 The Collector & District Magistrate, Ananthapur District at Ananthapur.
- 3 The Superintendent of police, Ananthapur District, Ananthapur.
- 4 The Superintendent, Central Prison, Cherlapalle, Ranga Reddy District.
5. 2 CCs to The Advocate General, High Court of A.P.Hyd (OUT)
6. 2 CD copies.